

CHRISTINE VON SCHEELE

IBLA 75-623

Decided January 21, 1976

Appeal from decision of Alaska State Office, Bureau of Land Management, rejecting Alaska Native allotment application AA-7119.

Affirmed.

1. Alaska: Grazing--Alaska: Native Allotments

Under the Alaska Native Allotment Act, no rights are acquired by an applicant who asserted commencement of settlement on land when it was included in a grazing lease issued under the Alaska Grazing Act of 1927, because the land was segregated from adverse appropriation.

APPEARANCES: Matthew D. Jamin and James Grandjean, Esqs., Alaska Legal Services Corporation, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Christine Von Scheele appeals from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated May 5, 1975, rejecting her application AA-7119 filed pursuant to the Alaska Native Allotment Act of May 17, 1906, as amended, 43 U.S.C. § 270-1 et seq. (1970). [Repealed by Alaska Native Claims Settlement Act, § 18, 43 U.S.C. § 1617 (Supp. III, 1973).]

Appellant, born in 1936, stated in her application, dated October 18, 1971, that she has resided on the land for which she seeks an allotment since September 1959. The Alaska State Office rejected her application because the land she sought was within a valid grazing lease, A-07916, issued on December 22, 1932, pursuant to the Alaska Grazing Act of March 4, 1927, as amended, 43 U.S.C. § 316 et seq. (1970). The lease has been renewed and is to be in effect until December 31, 1997.

[1] The Alaska Native Allotment Act authorized allotment of land only which is "vacant, unappropriated, and unreserved non-mineral land in Alaska." 43 U.S.C. § 270-1 (1970). Issuance of a grazing lease under the Alaska Grazing Act, supra, appropriates the leased lands and segregates them from the public domain, thereby barring effective entry until action is taken by the BLM to exclude the land from the lease. 43 CFR 4131.3-1; Opinion of the Associate Solicitor, M-36453 (July 25, 1957). The occupancy on which appellant bases her application was thus unauthorized and appellant acquired no rights during the period of her claimed occupancy. Helena M. Schwiete, 14 IBLA 305 (1974); Harold J. Naughton, 3 IBLA 237, 78 I.D. 300 (1971); Donald Miller, 2 IBLA 309 (1971).

Appellant contends that her application must be deemed a petition for determination that the lands under the grazing lease should be canceled or reduced. 43 CFR 4131.3-1; Helena M. Schwiete, supra. However, reducing or cancelling the grazing lease would not help the appellant because no authority exists to issue a Native allotment based on occupation after December 18, 1971, 1/ and as stated above, the existence of a grazing lease from 1932 to the present has precluded any qualifying occupation of the lands under the lease for the purposes of obtaining a Native allotment. 2/

1/ December 18, 1971, was the date on which the Alaska Native Allotment Act was repealed. 43 U.S.C. § 1617 (Supp. III, 1973).

2/ The land at issue is situated on Kodiak Island within protracted section 22, T. 29 S., R. 20 W., S.M. On February 10, 1940, Executive Order 8344 withdrew Kodiak Island from "settlement, location, sale, or entry for classification and in aid of legislation * * *." On June 16, 1941, the subject lands were excluded from Executive Order 8344 and simultaneously withdrawn "from all forms of appropriation under the public land laws * * * and reserved for the use of the War Department for military purposes" by Executive Order 8789. Executive Order 8789 was revoked by Public Land Order 1297 on May 3, 1956, but the order provided that the lands would not be open to appropriation under the public land laws until so ordered by the BLM. On June 24, 1968, the lands were opened only for selection by the State of Alaska, and on June 16, 1972, the State amended its selection application A-062768 to include all of the available land in the same section as the lands sought by the appellant.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Joseph W. Goss
Administrative Judge

